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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,989	11/14/2003	Joe R. Barnett	SAM2056	1550

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EXAMINER

GARRETT, ERIKA P

ART UNIT PAPER NUMBER

3636

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,989

Applicant(s)

BARNETT, JOE R. ST

Examiner

Erika Garrett

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/14/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to product, classified in class 297, subclass 344.12.
- II. Claim 20, drawn to method of using the apparatus, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the method of using is not needed in order to know how to use the chair. The occupant can use another method to use this chair and the products of this chair can be used to make something other than a chair for example stool, sofa, lawn chair etc.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Anthony Campbell on 9/22/04 a provisional election was made with traverse to prosecute the invention of the product, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

R
9/30/04
Claims 1-2,4-6, 9-13, and 17,19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shank (6,036,148). Shank discloses the use of a adjustable chair device for use on uneven surfaces comprising: a seat (14); a back (16) pivotally attached to said seat; four upper legs (12) pivotally attached to said seat; two armrests (figure 1), each armrest is pivotally attached to two of said four upper legs and pivotally attached to said back; four flanges (22), each flange having an eyelet orifice (fig. 2), wherein each flange is rigidly attached to one of each of said four upper legs; four lower legs (20), each lower leg is slidably engaged within said eyelet orifice of one of each of said four flanges; and four grommets (22, see fig.1), each grommet having a lock hole, each grommet is pivotally attached to one of each of said four upper legs, wherein said lock hole of each grommet is slidably engaged with one of each of said four lower legs. In regards to claim 2, comprising four footers (30), each footer is attached to one of each of said four lower legs. In regards to claims 4 &19, further comprising four caps (42), each cap is attached to one of each of said four lower legs. In regards to claim 5, wherein each upper leg of said four upper legs is made of aluminum tubing. In regards to claim 6, wherein each lower leg of said four lower legs are made of aluminum tubing. In regards to claim 9, wherein the seat is made of aluminum tubing with fabric, columns

Art Unit: 3636

1-2. In regards to claim 10, wherein the back is made of aluminum tubing with fabric. In regards to claim 11, wherein the armrests are made of aluminum. In regards to claim 12, wherein each flange of said four flanges is made of aluminum. In regards to claim 13, wherein each grommet of said four grommets is made of aluminum. In regards to claim 17, further comprising a kit comprising a seat, back, four upper legs, two armrest, four flanges, and four grommet.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank (6,036,148) in view of Burr (6,520,459). Shank shows the use of all the claimed invention but fails to show the use of a swivel ball joint attached to a footer. Burr teaches the use of a swivel ball joint (14) attached to a footer (10). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the lower legs with a swivel ball joint attached to the footer as taught by Burr, in order to provided a limited amount of movement.

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of DeWitt (4,408,743). Shank shows the use of all the claimed invention but fails to show the use of the seat and back made of nylon webbing. DeWitt teaches the use of nylon webbing. It would have been obvious to one of ordinary skill in the art

Art Unit: 3636

at the time of invention to modify the webbing with nylon as taught by DeWitt, in order to for the occupant to be more comfortable in the seated position.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of Sorrell (5,271,422). Shank shows the use of all the claimed invention but fails to show the use of the footer and cap is made of a plastic selected from the group consisting of rubber. Sorrell teaches the use of the footer and cap is made from a plastic selected from the group consisting of rubber. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the footer and cap with rubber as taught by Sorrell, in order to keep the chair more stable when the occupant is in the seated position.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the state of the art with respect to an adjustable chair: U.S Pat. No. 4772068, 6669281, 6616223, 6471288, 5435620, 6095607, 5499856, 5494333, 5848822, and 6056353.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
September 27, 2004


Peter M. Cuomo
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